

COMMITTEE ON BILLS ON SECOND READING

October 17, 2006

5:15 PM

Chairman Duval called the meeting to order.

The Clerk called the roll.

Present: Aldermen Duval, Lopez, Pinard
Alderman Garrity arrived late during discussion of Item 4.

Absent: Aldermen Gatsas

3. Ordinance amendment relative to revisions to Chapter 117 (Food Service Establishments Permit Fees) submitted by the Public Health Director.

Alderman Lopez moved for discussion. Alderman Pinard duly seconded the motion.

Alderman Duval requested Mr. Soucy of the Health Department to come forward.

Chairman Duval asked if these increases were contained in the FY07 budget. Mr. Soucy responded they were.

Chairman Duval questioned the large increase in Item IA to \$900. Mr. Soucy responded that the actual cost by the department was over the \$900, it was related to a full day inspection every quarter to large supermarkets.

Chairman Duval asked if there was regular review of the fees. Mr. Soucy responded they reviewed the amounts about once every three to five years.

There being no further discussion on this item, on motion of Alderman Lopez, duly seconded by Alderman Pinard, it was voted that the ordinance ought to pass.

4. Ordinance:

“Amending Section 33.054 (B) (2) (Overtime Compensation/Comp Time) of the Code of Ordinances of the City of Manchester.”

(Referred back to Committee by BMA on 10/03/2006.)

Alderman Lopez moved for discussion. Alderman Pinard duly seconded the motion.

Alderman Lopez asked if this was suppose to go back to the HR Committee.

Ms. Lamberton responded no it was remanded to this Committee.

Alderman Lopez stated he thought it was suppose to go back to HR.

Chairman Duval stated I asked for consideration by the Board for consideration to refer it back to HR, and with the Board wishes it was my understanding it was referred back to B2R, noting the Clerk could correct him if he was wrong.

Deputy City Clerk Johnson stated that action by the Board was to refer the item back to the Committee on Bills on Second Reading; that there was discussion on which committee later in the discussion and it was concluded that it would go back to Bills on Second Reading and other members could attend.

Alderman Lopez stated also Alderman DeVries was going to give the Chairman language Alderman Duval wanted in there.

Chairman Duval stated that was correct and he had spoken with Ms. Lamberton yesterday to confirm that the significant part of what Alderman DeVries had spoke of or her concern from my understanding was incorporated into the proposed change.

Ms. Lamberton stated if you refer to the letter I sent on October 10th, which is attached to the agenda.

Alderman Lopez questioned if it was.

Ms. Lamberton responded yes. Ms. Lamberton noted that she had want to show the Committee where the language was going, so if you look at the photo copy of the current ordinances the header is Overtime Compensation for Non-Exempt Employees and the paragraph that would be substituted is the one that is Number

2, that starts off with compensatory time. And then if you look at the sheet on the right side you'll see what I did was type the original language which was in the current Ordinance, the language that was before the Committee and the Board last time and then the updated proposed language and the change there is Alderman DeVries was concerned that the employees should be able to choose whether or not they wanted compensatory time or overtime. And so I have provided for that. If you read the third sentence, it says "When a department head determines that there is a need for overtime he shall offer the affected employees the option of accruing compensatory time or being paid overtime if funds are available." Because if funds aren't available then funds are available.

Chairman Duval stated as I recall that was Alderman DeVries main concern before the conclusion of the meeting.

Ms. Lamberton stated I think she is concerned frankly about departments that always pay overtime. This particular ordinance more often than not would apply to non-affiliated employees. Because most of the time we don't get funds for overtime. And currently we have departments that do do compensatory time, it's logged into the payroll system and because of staffing they don't get to use it within the week as the current ordinance requires and so because they are trying to do their work they are out of compliance with the ordinance, so if we have an audit they are going to be found to be out of compliance when they really haven't done anything wrong as a practical matter, it's just the ordinance is too restrictive that we have right now.

Alderman Lopez stated on the updated proposed language are we saying you can mandate an employee.

Ms. Lamberton stated typically you ask for volunteers. I would say if we had an emergency situation I would doubt the department head would have to mandate people because most people are always willing to help out. But if you had a situation where you really had a hard core emergency and you had to mandate people and people wanted the overtime I'm sure the Board would come up with the money to accommodate those employees.

Alderman Lopez how do we get around that we put emergency or something like that. Other than giving discretion to the department head to mandate employees to work. The way this reads is that department head in my view point can mandate.

Ms. Lamberton stated there is no language in there about mandating, and this is not changing, you thinking or your concern, there is nothing new there. For as long as people have been able to give compensatory time that could have been an issue. I in five years have never heard of that as an issue.

Alderman Lopez said so the proposed gives a choice of the employee to choose the compensatory time or paid overtime.

Ms. Lamberton stated correct.

Alderman Lopez stated you want to go over that again.

Ms. Lamberton responded look on the bottom, updated proposed language, the first sentence starts off with compensatory time, the second sentence says the maximum amount, then the third sentence when a department head determines that there is a need for overtime he or she shall offer affected employees the option of accruing compensatory time or being paid overtime if funds are available.

Alderman Lopez stated and if funds are not available the department head has the option of coming before the Board for funds from contingency if need be.

Ms. Lamberton responded right, but that would be an extreme emergency.

Alderman Pinard asked what overtime starts, 40 hours.

Ms. Lamberton responded yes, after 40 hours of pay then overtime for non-exempt employees by federal law we are required to pay them time and one-half for every hour they work.

Alderman Pinard asked if Mr. Roche had anything to say about that.

Chairman Duval recognized Mr. Roche and stated he would allow him to address the Committee.

Michael Roche, stated I am here this evening even though it doesn't at this point in time directly affect any of the affiliated employees I am here prior to start negotiations in three or four months, where historically in the city things that go against the employees if its bargained with the Unions they usually impose it upon the non-affiliated after the fact and they use at times the affiliated for the guinea pigs, in this case it's like the reverse the trial balloon is going up with the non-affiliated and my union among others are very concerned that if it is allowed to pass the way it is written which at this point in time is very unclear at best then a lot of us may be sitting in this room a year from now complaining that's one of the two or three items that we are trying to get a contract for. I'm here just to bring up some areas where I think there are some weaknesses and try to prevent labor unrest nine or ten months from now. If this is to be negotiated or attempted to be with the various unions, or at least with my union. I'm here tonight not speaking

for anyone else but for employees of the Water Works who I have represented since early 1982. This ordinance again this is the second change it doesn't go far enough what it does, the words if funds are available. If you leave that language what's going to happen you are going to have, you're going to have at least the favoritism abuse and misuse which happens consistently in city government here. The current ordinance already addresses that in the first section under administration in emergencies the department head may prescribe, it's already covered there so obviously people don't work, they don't work unless there are funds available or if there needs to be they have meetings and ways where you can get monies as you know through contingencies, so that's really not necessary. The other thing it does none of you on this committee were around nine years ago, but by striking the language and not spelling out where overtime cannot go to executive, administrative and professional employees and positions, then what you do like what happened in 1997 you had deputy department heads that were making \$2,300 a week in overtime, which was against the federal laws and our ordinances at the time but nonetheless these people got paid and it will continue probably 10 years later in 2007, so you are removing language that was put there for a reason. And it has been there for a long time. Two weeks ago I watched the meeting not once, but twice. Probably should have better things to do with my time but the HR Director who I have a lot of respect for she stated that after Alderman O'Neil had asked her several questions about which department heads wanted these changes, she stated that it was people in her office or her employees that have special projects there have restrictions where you have to use it before the following pay period, which is very true, but under the scenario under the existing language her employees who were all on a 40 hours work week would never have qualified for compensatory time, so it would have been an automatic thing as she had just stated after 40 to have to be paid by the federal government at time and one-half. So you have ordinances and its great, you want to change them, but you also have to live with them and before they are changed you have to honor the existing language and you have to do that so, that's just a couple, and hopefully when it goes back to the full committee, I have only talked to a handful of aldermen in the last 17 days, I know there are other unions that couldn't be here that are quite concerned and this was a last minute, I've only had this language for less than three hours and I appreciate your time and would take any questions if you like.

Alderman Lopez asked Ms. Lamberton why wouldn't we go back in what you provided us and put that exception, except for executive, administrative and professional employees ...why wouldn't we put that I thought we discussed that before.

Ms. Lamberton stated because the whole ordinance is for non-exempt employees that's all it is limited to when you talk about overtime. I don't see any reason to

do that, why would I, if there was an ordinance for exempt people I wouldn't go in and say and by the way non-exempt people can't have this. It just doesn't make any sense if you are trying to make things consistent with what the whole ordinance is about.

Alderman Lopez stated I understand that but if it's just semantics so to speak it makes not difference one way or the other and it clears up an issue for future people who might interpret this differently we are not always going to be here.

Ms. Lamberton stated if you look at the current ordinance, I think perhaps it's being misinterpreted first of all, it says all over time work beyond 40 hours in one week must be paid at the time and one-half rate except for executive, administrative and professional employees in exempt positions as defined in the administrative regulations. This ordinance is for non exempt employees. If we wanted to write an ordinance for exempt employees in fact by the fair labor standards act you as an employer can pay them overtime at straight time or you can pay them at time and one half that is provided for by the fair labor standards act. If the employer chooses to do so. And I am not proposing that here. I'm just proposing that we legitimize reality. I can tell you that first of all I did not request this ordinance for my office. Mike must have misunderstood that. What I gave in that response was an example is if I had a project to do in HR was my example. My office rarely works overtime if ever. Just so you know that. But I can tell you in Information, in the Tax Collector's office they are accruing compensatory time, and they are out of compliance with our current ordinance. What you also do when you ignore the fact that this is happening is people have a second set of books and do we want to have that. We have an ordinance that is reasonable for non-exempt employees then it will be put in the computer system our office will tell them you can't work these people any more they have to have the time off. We will be controlling that and auditing that. I can't do that now because except for Info and Police Department puts in information about comp time. With respect to Mike I went through all the collective bargaining agreements, and if they have language in them that deals with overtime the ordinance does not apply. That is the typical thing that the union will tell us. If Mike wants to propose compensatory time for his employees or members in the next round of negotiations have at it. I'd be surprised if anybody denied it. But again that's between Mike and the negotiator. Right now, all I'm saying is that I'm trying to make us in compliance with the federal law. That's all I'm trying to do here. I am not trying to give any special groups anything, just saying you have non-exempt employees that are working comp time and they need to be able to take it in less than two weeks.

Alderman Lopez stated I understand what you are saying. I think that language is not in there, that would clear up a lot of issues with bargaining units. Even though

you are saying that this is for non union people. But there was a reason why people put that in there years ago. There must have been the same discussion that we are having today that is fearful that exempt employees could fit into this particular category. If the ordinance is strictly for non-affiliated then maybe it should stipulate that in order to clear up any misunderstanding or interpretation on anybody's part. If it doesn't make a difference what's the difference of just putting it in there and.

Ms. Lamberton stated well, if you want to make an amendment for a last sentence that says this ordinance shall apply to only non-affiliated employees then that's fine.

Alderman Lopez stated yea, I would say except for executive, administrative and professional employees in exempt positions as defined in the administrative regulations so that it be consistent with the original ordinance. I think that's the point that is being made by Alderman DeVries and a few other aldermen in reference to this.

Solicitor Clark stated I want to give a little historical perspective here. The base language in this ordinance was drafted many years ago, prior to Yarger Decker, prior to most of the Human Resources ordinance that currently exist. The reference to administrative regulations is the way the city used to operate. They had a base ordinance for personnel, and then there were administrative regulations adopted through the department by the Personnel Committee at that time and they were kept in a book, they were actually administrative regulations. Those no longer exist. And referencing them in the ordinance doesn't clarify anything it actually causes more confusion.

Alderman Lopez responded well Tom, if you're saying that legally then we couldn't impose any of this if we approve this on to the unions.

Solicitor Clark stated you cannot impose any of these things on the unions without negotiating it. The personnel or human resource ordinances generally do not apply to unions if their contract covers that language.

Alderman Lopez asked if there was any reason why they can't add that language into the ordinance so it doesn't leave any doubt whatsoever on anybody's part or interpretation.

Solicitor Clark stated that it does not apply to executive, administrative and professional employees in exempt positions, you can you leave that in there and take out the reference to administrative regulations, but it is already been captured

at the beginning of the ordinance where it says that it is for non-exempt employees only.

Chairman Duval stated I think it is pretty clear to me as well and I think the HR Director has done a commendable job really trying to take into consideration all facets of this exchanged dialogue since the last full Board meeting. I appreciate Mr. Roche's remarks but I don't see where this leads down the path to ruin. I really don't, I don't see this as being inflammatory or causing problems. I don't see it Mr. Roche.

Mr. Roche stated time will tell, it's in the minutes and it is all on record so I hope you're right.

Chairman Duval stated I'm optimistic that it will be fine but in the event it needs to be changed it can always come back to the full Board and can request to be changed, and I'm sure the Board will listen as it usually does.

Alderman Garrity stated he would echo the chairman's comments noting when we are negotiating contracts I believe every union president is involved in those negotiations on the team and I think they are all aware of the union contracts whatever it is supercedes this.

Alderman Lopez stated I would still like to put the amendment in there by striking out a couple of items after talking with the city Solicitor. Except for executive, administrative and professional employees in exempt positions.

Chairman Duval stated he would accept that as a motion, he thought it a bit redundant, if it satisfies the alderman then he thought it acceptable.

Alderman Pinard seconded the motion.

Ms. Lamberton asked where the wording was to be put.

Alderman Lopez stated at the end of the last paragraph.

Ms. Lamberton offered the verbiage: this section of ordinance shall not apply to executive, administrative or professional employees in exempt positions.

Alderman Lopez so concurred this as acceptable to be added as the last sentence.

Chairman Duval called for a vote. The motion carried with none in opposition.

On motion of Alderman Garrity, seconded by Alderman Lopez, it was voted that the ordinance ought to pass as amended.

5. Ordinance:

“Amending Section 33.076 (A), Special Leave of the Code of Ordinances of the City of Manchester.”

(Referred back to Committee by BMA on 10/03/2006.)

Deputy City Clerk noted there was a handout distributed to members.

Alderman Lopez moved for discussion. Alderman Garrity seconded the motion.

Alderman Lopez stated that the only comment he would make was in reference to the letter he had written was that he still did not believe that the 90 days should be approved by the department heads, and we wanted the Mayor in there, but one of the things we talked about at the regular board was for 30 days before it comes before another board, the mayor can approve up to 30 days. I think there was some discussions as to favoritism, if there was such a case but it gives sort of a chain of command if the department head has x number of days up to 30 days, the mayor is involved anything over 30 days, then it comes to the Board of Mayor and Aldermen because I think if we are going to loose employees for 90 days we should know what those circumstances are and that's just my belief so.

Alderman Garrity stated as long as I have been on the Board five years now I don't remember us ever denying one of these it's always a valid reason, personal reasons, and I'm ok for 90 days, I do agree that the mayor should be informed and participate in it but I don't think it really needs approval of this Board it's usually for a personal reason that is justified.

Alderman Duval agreed with Alderman Garrity.

Alderman Pinard one clarification my recollection of working many years ago if you left your place of work and you wanted to come back you had to have a doctor's slip, any length of time, is that the same thing on the city side.

Ms. Lamberton stated it depended on whether they were affiliated or non-affiliated as to what the requirement was for non-affiliated if it was after three days, and like

Water Works was 10 days, it depended on the bargaining unit or non-affiliation. The other thing is if the employee is on the Family Medical Leave Act, in order to come back to work they have to provide us with certification from their physician that they are fit for work, if they are not completely fit for work light duty, and what type of light duty they can do.

Alderman Lopez stated the reason I bring this up is we did one and found out the individual was out there working on construction. So you know, it's always easy to get documentation for the professional people out there and once it's approved it could see some favoritism and he is out there doing some other job making more money so I think there is rules and regulations on that but to make sure that there is a process and a chain function going on here.

Alderman Garrity I would assume and hope that when 90 days is approved its for valid reasons, for personal reasons, we are not going to approve 90 day leave for someone to go work construction on the side or deliver phone books or something like that, that is grounds for termination as far as I'm concerned. It's always anyone that has been in front of this Board while I was on was always been a valid reasons personal reasons medical or otherwise.

Alderman Pinard stated someone applies for a leave of 90 days or whatever is there anybody in HR that follows to find out if these people are telling the truth. I think the private sector did that many years ago.

Ms. Lamberton stated there is a number of questions that you have asked. First of all by City Charter department heads are charged with running departments, hiring firing managing their employees and I don't think it is unreasonable for them to be able to make a judgement on whether or not they can grant an employee more than ten days off. Right now by city ordinance again the department head has to get permission from the Mayor to grant people up to 10 days off. That's a contradiction to whole purpose of having department heads, so I think that's unreasonable not to compare things but I worked for the State of NH and since 1952 department heads have been able to grant 90 days without pay for their employees if they felt in their opinion it was the best thing. When does that happen. It happens when a person is very ill. 99.9 % of the time it is when a person is very ill and when that happens do we really want to be coming to the full Board and the public and what not and say Ginny Lamberton has cancer and she'd like to have more than 10 days off. And in some ways I just think that violates our employees privacy. I think we have to trust our department heads to make good judgements about granting time off.

Alderman Garrity moved that the ordinance ought to pass with the language proposed in the handout. Alderman Pinard seconded the motion. The motion carried with Alderman Lopez recorded in opposition.

TABLED ITEMS

6. Ordinance:

“Amending the Zoning Ordinance of the City of Manchester by establishing the Manchester Landfill Groundwater Management Zone (ML-GMZ) Overlay District to monitor groundwater quality in the vicinity of Dunbarton Road and Front Street.”

(Tabled 08/21/2006)

This item remained on the table.

On motion of Alderman Lopez, duly seconded by Alderman Pinard, it was voted to remove items 7 through 11 off the table for discussion. Alderman Garrity was opposed.

7. Ordinance:

“Amending the Zoning Ordinance of the City of Manchester by adding language to Article 10.09B 2 regarding the use of front yard areas for parking in residential districts.”

(Tabled 08/21/2006)

Commissioner of Building LaFreniere stated there was concern raised at the public hearing and at the subsequent B2R meeting with the potential impact that might be realized regarding front yard parking and Building Department have review it and requested the proposal be withdrawn, they would submit something in the future that takes into account concerns expressed.

On motion of Alderman Garrity, seconded by Alderman Lopez, it was voted to receive and file this ordinance.

8. Ordinance:

“Amending the Zoning Ordinance of the City of Manchester by adding language to 5.11 Table of Accessory Uses regarding the storage of unregistered automobiles.”

(Tabled 08/21/2006)

There was concern expressed at the public hearing on the collective zoning ordinance changes, in this particular instance the concern was on the language of unroadworthy and so they were suggesting the verbiage of “or uninspected” to address the issue.

Alderman Roy asked about the one boat one other vehicle, falling under unregistered. To give the example, I am bringing my boat home tomorrow, when I bring my boat home I bring the dinghy with it which is also boat. If I have the two of those in my yard am I out of compliance, and even though my neighbors may not mind them they may look very neat, as I drive around my ward I see a lot of situations where they might be a snowmobile trailer and a boat, or a canoe and a small boat and I feel that we are overlegislating and infringing on property rights by it being one and I don’t know how that is going to be viewed under the law.

Commissioner LaFreniere stated that current ordinance as structured limits accessory storage of one trailer, unregistered automobile or one boat the proposed change was only to provide for some additional regulation with regard to the storage of the automobile, so we are not proposing any change that would affect the storage of trailers or boats and that sort of thing. Currently through our efforts to gain compliance we have been stymied in some cases with the enforcing the requirement to get junk vehicles off the lot by having someone go out and register their junk vehicle. If they register their junk vehicles then they are no longer unregistered and we can no longer unregistered and we can regulate their placement on the lot. So the only effect of this change would be to allow us to regulate those unregistered vehicles and say that they also had to be in this case only one uninspected vehicle.

Alderman Roy stated and I absolutely support you on that I’m just using this as a platform because it is that ordinance to say that we have a number of properties throughout the city that are very neat and very clean that are out of compliance.

In response to questions raised by Alderman Pinard, it was noted that this ordinance did not govern trash issues, which were health and fire prevention issues.

It was determined that the boat issue needed to be addressed under a new proposal because of public hearing requirements, and the Building Commissioner could address that at another time to the Board.

Following brief discussion, on motion of Alderman Pinard, duly seconded by Alderman Garrity, it was unanimously voted to approve the ordinance as ought to pass with the new language as contained in the agenda as “or uninspected”.

9. Ordinance:

“Amending the Building Code of the City of Manchester as adopted in Section 151.01 of the City of Manchester Code of Ordinances by repealing the 1999 National Electrical Code and adopting the 2005 edition of the National Electrical Code; by repealing the 1993 BOCA National Plumbing Code and adopting the 2000 edition of the International Plumbing Code as amended by the State of NH Board of Licensing and Regulation of Plumbers and with further amendments contained herein.”

(Note: Electrical Code adopted by the BMA on 09/05/2006. Plumbing Code tabled in Committee on 08/21/2006.)

Commissioner LaFreniere stated there was a significant amount of discussion on the night this came before the committee and the intent of the committee was to adopt both the electrical code update as well as the plumbing code update at the same time, the discussion we understood was oriented around the fees. What we are requesting this evening is that the plumbing code update be moved forward to the full board without any fee increases.

On motion of Alderman Lopez, seconded by Alderman Garrity, it was voted to amend the ordinance to approve changes to the Plumbing Code (removing reference to the electrical code) and not increase fees.

On motion of Alderman Garrity, duly seconded by Alderman Lopez it was unanimously voted that the ordinance ought to pass as amended.

Items 10 and 11 were addressed together.

10. Ordinance:

“Amending Chapter 1 Administration of the Building Code of the City of Manchester providing for increased fees.”

(Tabled 08/21/2006)

11. Ordinance:

“Amending Chapter 150 Housing Code, Subsection 150.114 and Chapter 155 Zoning Code, Subsection 155.02 of the Code of Ordinances of the City of Manchester by providing for increased fees.”

(Tabled 08/21/2006)

Alderman Lopez moved for discussion. Alderman Garrity duly seconded the motion.

Commissioner LaFreniere stated these were similar in that each of these items are specifically the increased fees that we brought forward to the full board for consideration after doing an analysis of the existing fee schedule. This project was undertaken at the request of the mayor and we determined that the fee increases as proposed we felt were appropriate and would generate should they be adopted for the full calendar year an approximate increase in revenue of \$200,000. The mayor did include that in his budget.

Chairman Duval stated that these are part of the Building Department FY07 budget on the revenue side.

Commissioner LaFreniere stated that is correct, noting they had been requested by the Finance Department to look at our revenue projections to refine them as they are looking at setting the tax rate and absent the adoption of these we had suggested that our revenues be dropped down by 200,000.

Chairman Duval stated you were asked by the mayor to conduct a study I imagine you looked at other communities to come to a decision on the amounts.

Commissioner LaFreniere replied that was correct and that analysis is what resulted in the fee adjustments that were proposed, many of the fees that we currently charge were not adjusted because we pretty competitive in our rates we adjusted only those areas where we felt it was appropriate and other communities were charging rates that were higher than we were charging.

Alderman Lopez moved for discussion, Alderman Garrity seconded the motion.

Alderman Lopez asked what would be the effective date if approved tonight.

Commissioner LaFrennier stated it would be up to the Board but we had a public hearing on it, it has been posted, we had anticipated it becoming effective upon adoption.

Alderman Garrity stated he would be opposed to both items in his day job he dealt with all kinds of brand new start up small businesses and they struggle to get their doors open. Increasing these fees will hurt small business in the city.

Chairman Duval asked in response to that concern which he shared, what was the largest increase.

Commissioner LaFreniere stated the increases were spread across the spectrum essentially the building permit increases only relate to new buildings and structures to bring parity to the cost of the building permit fees that renovation would so now it is \$10 per thousand dollars of construction costs for a renovation, it's \$8 for new building the proposal is to make them both \$10 because he could not justify the difference between the two, the other fees for a plumbing fixture would go from \$4 to \$5, and there is a lot of different fees like that, one more significant that we don't charge for now is elevators would be \$150 fee and the reason for that is that it is a specific category of elevators that is not inspected by the state that we are now required to inspect and it is a particularly labor intensive project, one elevator will take half a day to inspect. There are additional adjustments to the housing code fees reinspection fees going from \$20 to \$25, those sorts of things.

Again, they had included the recommendations in the numbers presented to the mayor and had provided the justification of the analysis as well at that time. Alderman Lopez moved to approve both ordinances as ought to pass and request the items move to the Board this evening. Alderman Pinard seconded the motion. The motion carried with Alderman Garrity recorded in opposition.

There being no further business to come before the committee, on motion of alderman Lopez, duly seconded by Alderman Pinard, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee